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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 535/2016

M/S LOVENISH AGENCY THR. ITS PROPRIETOR
LOVENISH MITTAL

..... Petitioner

Through: Mr. P.K. Mittal & Mr. M.K. Sinha,
Advocates.

versus

STATE & ANR

..... Respondents

Through: Ms. Radhika Kolluru, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
28.09.2016

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The petitioner has preferred the present leave petition to assail the judgment dated 08.06.2016 passed by the learned MM (East), Karkardooma Courts, Delhi in complaint case No.47590/16 (Old No.607/13), whereby the petitioner's complaint under Section 138 of the Negotiable Instruments Act has been dismissed and the respondent accused acquitted.

The petitioner/ complainant had preferred the aforesaid complaint in respect of dishonour of a cheque for Rs.3,72,000/- stated to have been issued by the accused since payment was not made despite issuance of demand notice. The case of the complainant was that the said cheque had been

issued by the accused in respect of supply of tea made by the complainant to the accused. On the other hand, the defence of the accused, inter alia, was that the said cheque had been stolen from his shop and he had already reported the loss of the said cheque to the bank.

The petitioner/ complainant led evidence and it is evident from the cross-examination of the complainant that the complainant had no document whatsoever to establish the so-called transaction for sale of tea. Though the complainant stated that he had documents to establish the sale transaction such as lorry receipts, he did not produce the same in his evidence. The complainant claimed that he had supplied in all 672 Kgs. of tea @ Rs.145/- per Kilogram, which comes to Rs.97,440/-. However, he claimed that goods worth Rs.3,72,000/- had been supplied, in respect of which the cheque in question had been issued. The Trial Court found discrepancy in the case of the complainant. So far as the defence of the accused is concerned, the accused produced a witness from the bank DW-2, who exhibited DW-1/A and DW-2/1 (OSR) respectively. The same showed that the accused had indeed made a complaint with regard to the misplacement of the cheque from his shop on 29.05.2013, whereas the cheque in question was dated 31.05.2013, i.e. two days later. In these circumstances, the learned MM held that the accused had set up a probable defence and was, therefore, acquitted.

The submission of learned counsel for the petitioner is that the stand taken by the accused initially before the Trial Court was that the petitioner was a stranger to him, he repeated this stand while recording his statement under Section 313 Cr.P.C. However, during his cross-examination, the accused admitted that the parties had previous financial transactions.

No doubt, this defence of the accused appears to have been belied.

However, the complainant has, firstly, to stand on his own foot, which he has failed to do. Secondly, the defence of the accused that he had lost the cheque on 29.05.2013 was probablised by the fact that he reported the said loss to his bank on the following day vide letter dated 30.05.2013, whereas the cheque was allegedly issued to the complainant on 31.05.2013.

In view of the aforesaid circumstances, I do not find any error in the impugned judgment. The petition is dismissed.

VIPIN SANGHI, J

SEPTEMBER 28, 2016

B.S. Rohella